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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/728,756	12/04/2000	Richard F. Bergen	D/01	2366

7590 08/18/2003  
William A. Henry, II  
14 Barrington Hills  
Pittsford, NY 14534

EXAMINER

HARRINGTON, ALICIA M

ART UNIT	PAPER NUMBER
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2873

DATE MAILED: 08/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/728,756

Applicant(s)

BERGEN, RICHARD F.

Examiner

Alicia M Harrington

Art Unit

2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 6, 7, 10, 15, 17 and 22-36 is/are pending in the application.
- 4a) Of the above claim(s) 6, 7, 15, 22, 23, 25-29 and 32-35 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10, 30 and 36 is/are allowed.
- 6) ☒ Claim(s) 17 and 24 is/are rejected.
- 7) ☒ Claim(s) 31 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 31 is objected to as being dependent upon a canceled claim 14. For purposes of the rejection the claim will be examined as if it depends from claim 10.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 17 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Follis (US 5,237,634) in view of Goodrich et al (US 6,502,319).

Regarding claims 17 and 24, Follis discloses a system for creating a light pattern within a plane (level). Follis teaches that the intersection of light orthogonal with a fiber optic rod produces light in a plane (see figures 2a and 2b) forming a line in a circular pattern (see col. 6, lines 34-69). Follis also discloses an embodiment where the fibers are configured as a hollow tube (see figure 4b; col. 8, lines 10-69). And upon the laser entering the tube it provides light projected into pattern. Follis also teaches that the altering device can have many forms, such as hollow tubes (conical/cone shaped/disk shaped) to provide light patterns in a plane, as taught by Follis.

However, Follis fails to disclose an embodiment where the hollow tubes form an array of tubes (capillary array).

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In the same field of endeavor, Goodrich teaches an array of cylindrical lens may be used to receive laser light and project the light onto a line in a plane (see figure 4; col. 2, lines 41-60). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Follis to provide for plane/line pattern formations when projecting light onto an array of cylindrical elements, as taught by Goodrich, to produce an improved visible line in the plane.

***Allowable Subject Matter***

4. Claims 10, 30, 36 allowed.

5. The following is a statement of reasons for the indication of allowable subject matter:

Regarding claim 10 and 36, prior art taken either singularly or in combination fails to anticipate or fairly suggest the limitations of the dependent claims, in such manner that a rejection under 35 U.S.C 102 or 103 would be proper. The prior art fails to teach a combination of all the claimed features as presented in independent claims, which include projecting laser light onto a hollow tube within a hollow tube to form an outward pattern of an optical line as claimed.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Orosz, Jr. (US 5,836,081) discloses a light beam leveling means and method; and

Douglass, II (US 6,540,381) discloses a spectral light tube.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia M Harrington whose telephone number is 703 308 9295.

The examiner can normally be reached on Monday - Thursday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Epps can be reached on 703 308 4883. The fax phone numbers for the organization where this application or proceeding is assigned are 703 308 7724 for regular communications and 703 308 7724 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 0956.



AMH  
August 4, 2003

Alicia M Harrington  
Examiner  
Art Unit 2873



Georgia Epps  
Supervisory Patent Examiner  
Technology Center 2800